

REMARKS

In the Final Office Action, the Examiner rejects claims 1-10 and 15-20 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement; rejects claims 1-10 and 15-20 under 35 U.S.C. § 102(e) as allegedly anticipated by ERICKSON et al. (U.S. Patent 6,882,765; hereafter ERICKSON); rejects claim 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over CHIU et al. (U.S. Patent Pub. No. 2002/0063916; hereafter CHIU) in view of PAN (U.S. Patent 7,274,869); and rejects claims 12-14 under 35 U.S.C. § 103(a) as being unpatentable over CHIU in view of PAN and further in view of ERICKSON. Applicant traverses these rejections.

By way of this amendment, Applicant proposes amending claims 1, 2, 4, 6, 7, 9, 11, 15 and 16. No new matter is added. Claims 1-20 are pending.

Rejection under 35 U.S.C. § 112, first paragraph

Claims 1-10 and 15-20 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant traverses this rejection.

With regard to claim 1, the Examiner alleges that the feature, "causing a working port of the OXC to directly connect to a protection port...", is not

supported by the Specification. The Examiner alleges that the term, "directly" is not stated in the Specification and that Figs. 3A-3C show that the connection to the protection port is through the output port of the OXC and not through the working port, as claimed. (See, final Office Action, pp. 2-4.) Applicant disagrees.

For example, Fig. 3C clearly shows that the input working port (215) is directly connected to the input protection port (210). (See also, p. 6, lines 22 and 23, p. 7, lines 2-4 and Fig. 4.)

Therefore, Applicant submits that claim 1 and its dependent claims comply with the written description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claim 1 and its dependent claims under 35 U.S.C. 112, first paragraph.

Independent claims 6 and 15 and their respective dependent claims comply with 35 U.S.C. 112, first paragraph, for at least the same reasons as set forth above, with respect to claim 1. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 6 and 15 and their respective dependent claims under 35 U.S.C. 112, first paragraph.

Rejection Under 35 U.S.C. § 102(e) based on ERICKSON

Claims 1-10 and 15-20 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by ERICKSON. Applicant respectfully traverses this

rejection.

A proper rejection under 35 U.S.C. § 102 requires that a single reference teach every aspect of the claimed invention either expressly or impliedly. Any feature not taught must be inherently present. (See M.P.E.P. § 2131.) Applicant respectfully submits that ERICKSON does not disclose or suggest the features recited in claims 1-10 and 15-20.

Independent claim 1 is directed to a method for responding to a failure in a network including a router and an optical cross-connect system (OXC), the method comprising: detecting the failure in the router; sending a signal from the router to the OXC, where the signal indicates the failure; causing an input working port of the OXC to directly connect to an input protection port of the router in response to detection of the signal; and transmitting data from the router to the OXC via the input protection port. Applicant respectfully submits that ERICKSON does not disclose or suggest this combination of features.

For example, ERICKSON does not disclose or suggest causing an input working port of the OXC to directly connect to an input protection port of the router in response to detection of the signal. The Examiner alleges that this feature has no patentable weight (final Office Action, p. 3) and does not address this feature in any prior art rejection. The Examiner relies on col. 23, lines 28-41 and Fig. 17b of ERICKSON for allegedly disclosing causing a

working port of the OXC to connect to a protection port of the router. (See final Office Action, p. 5.) Applicant submits that this section and figure of ERICKSON do not disclose or suggest the above-mentioned feature of claim 1.

At the outset, Applicant submits that the final Office Action is improper. MPEP § 2163 sets forth:

III. COMPLETE PATENTABILITY DETERMINATION UNDER ALL STATUTORY REQUIREMENTS AND CLEARLY COMMUNICATE FINDINGS, CONCLUSIONS, AND THEIR BASES

The above only describes how to determine whether the written description requirement of 35 U.S.C. 112, para. 1, is satisfied. Regardless of the outcome of that determination, Office personnel must complete the patentability determination under all the relevant statutory provisions of title 35 of the U.S. Code.

Once Office personnel have concluded analysis of the claimed invention under all the statutory provisions, including 35 U.S.C. 101, 112, 102, and 103, they should review all the proposed rejections and their bases to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the findings, conclusions, and reasons which support them. When possible, the Office action should offer helpful suggestions on how to overcome rejections.

This section of the MPEP discloses that even if the Examiner makes a rejection based on 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, the Examiner is still required to determine patentability under all relevant statutory provisions. Thus, the Examiner cannot merely disregard a claim feature because the Examiner

alleges that the feature does not satisfy the written description requirement - as the Examiner has done with the feature, "causing a working port of the OXC to directly connect to a protection port..." Accordingly, Applicant submits that the final Office Action is defective and the Examiner should withdraw the finality of the Office Action and issue a new non-final Office Action addressing the above-mentioned feature of claim 1.

In any event, col. 23, lines 28-41, of ERICKSON (which describes Fig. 17B) discloses:

Referring now to FIG. 17B, the client 1502 and the optical cross-connect switch 1504 after being signaled, now know that a connection failure in link 1506A' has occurred. The optical cross-connect switch 1504 and the client 1502 each switch from the pair of full duplex links 1506A and 1506A' over to the protection connection 1508 and its pair of full duplex links 1518 and 1518'. The client 1502 internally switches the connection from port 1521A to its protection port 1522. The optical cross-connect 1504 internally switches the connection from port 1531A to its protection port 1532 ending the optical paths 1551 and 1551' and establishing optical paths 1651 and 1651' respectively through the optical switch fabric 1312 between its protection port 1532 and port 1541B.

This section of ERICKSON discloses that an optical cross connect switch (OXC) (1504) has a port (1541A) that receives data from and sends data to a network. During normal operation, the OXC receives data at a first port (1541A), sends the data via an optical path to second port (1531A) of the OXC, which is connected, via an optical link (1506A), to a port (1521A) of a client (1502). OXC (1504) is provided with a protection port (1532). In the

event that a fault occurs with, for example, optical link (1506A), the OXC switches the first port to a first port associated with an operational optical link and connects the new first port to the protection port (1532). The protection port (1532) is then connected to a protection link (1522) of the client.

The Examiner alleges that port (1541B) of ERICKSON corresponds to the claimed, "input working port" – a point that Applicant does not concede. Fig. 17B of ERICKSON clearly shows that port (1541B) is connected to a protection port (1532) of an OXC and that the protection port (1532) is connected to a protection port of a client (1502). ERICKSON does not disclose or suggest that port (1541B) is directly connected to an input protection port (1522) of the client, as would be required under the Examiner's interpretation of ERICKSON. Therefore, ERICKSON cannot disclose or suggest causing an input working port of the OXC to directly connect to an input protection port of the router in response to detection of the signal, as required by claim 1.

As discussed above, the Examiner alleges that the feature, "causing a working port of the OXC to directly connect to a protection port..." is not supported by the Specification. The Examiner alleges that the term, "directly" is not stated in the Specification and that Figs. 3A-3C show that the connection to the protection port is through the output port of the OXC

and not though the working port, as claimed. (See, final Office Action, pp. 2-4.) Applicant disagrees.

For example, Fig. 3C clearly shows that the working port (215) is directly connected to the protection port (210). (See also, p. 6, lines 22 and 23, p. 7, lines 2-4 and Fig. 4.)

Therefore, the feature, "causing an input working port of the OXC to directly connect to an input protection port of the router," is supported by the Specification and must be given patentable weight.

Applicant respectfully submits that ERICKSON does not anticipate claim 1 for at least these reasons. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claim 1 under 35 U.S.C. 102(e) based on ERICKSON.

Claims 2-5 depend from claim 1. Therefore, Applicant submits that these claims are allowable for at least the reasons set forth above with respect to claim 1.

Independent claims 6 and 15 recite features similar to (yet possibly of different scope than) the feature described above with respect to claim 1. Therefore, Applicant submits that ERICKSON does not anticipate claims 6 and 15 for at least reasons similar the reasons set forth above with respect to claim 1. Accordingly, Applicant requests that the Examiner reconsider

and withdraw the rejection of claims 6 and 15 under 35 U.S.C. 102(e) based on ERICKSON.

Claims 7-10 and 16-20 depend from claims 6 and 15, respectively. Therefore, Applicant submits that these claims are allowable for at least the reasons as set forth above with respect to claim 6 and 15.

Rejection under 35 U.S.C. § 103(a) based on CHIU and PAN

Claim 11 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over CHIU in view of PAN. Applicant respectfully traverses this rejection

Independent claim 11 is directed to an optical cross-connect system comprising a spare port to transmit low priority data from a router; and a working port to transmit high priority data from a primary router, where the working port is connected to the router in response to a failure of the primary router. Applicant respectfully submits that CHIU and PAN, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, CHIU and PAN do not disclose or suggest that the working port is connected to the router in response to a failure of the primary router. The Examiner relies on ¶ 47 and Figs. 3 and 6 of CHIU for allegedly disclosing that a working port is connected to a router in response

to a failure of a primary router. (See final Office Action, pp.9 and 10.)

Applicant disagrees with the Examiner's interpretation of CHIU.

At the outset, Applicant submits that the Examiner's interpretation of CHIU is inconsistent, in that the Examiner argues two contradictory positions.

For example, as stated above, the Examiner alleges that CHIU discloses that a working port (of an OXC of CHIU) is connected to a router in response to a failure of a primary router. However, the Examiner also alleges that the OXC of CHIU has a protection port and a working port and that the protection port replaces a failed working router (100_{B1}) with a protection router (100_{B2}). (See final Office Action, p. 9.) These two positions are contradictory, in that the protection router cannot be connected to the OXC by both a working port and a protection port, as the Examiner appears to allege. Therefore, Applicant requests that the Examiner provide clarification of this rejection. Furthermore, given that the entire rejection of claim 11 is unclear, Applicant requests that the Examiner provide a new non Final Office Action clarifying the rejection of claim 11.

In any event, Fig. 3 of CHIU (which is described at ¶ [0044] and ¶ [0045] of CHUI) discloses an OXC_A that is connected to router 100_A and an OXC_B that is connected to router 100_{B1} and router 100_{B2}. Furthermore, router 100_{B1} and router 100_{B2} are connected together by a light path. A

light path connects router 100_A and router 100_{B1} during normal operation. If router 100_{B1} fails, OXC_B creates a new light path connection between router 100_A and router 100_{B2}. This new connection uses the same port on router 100_A, as was used to connected to failed router 100_{B1}. Router 100_{B2} connects to the light path using either the same port as was used to connect to router 100_{B1} or a spare port on router 100_{B2} (See, ¶ [0045].) This section of CHIU does not disclose or suggest that the working port is connected to the router in response to a failure of the primary router, as recited by claim 11. In fact, CHIU is silent on how OXC_B connects to router 100_{B2}. Therefore, CHIU cannot disclose that a working port of OXC_B connects to router 100_{B2}.

¶ [0047] of CHIU (which describes Fig. 6) discloses:

The failure of router 100_{B1}, at step 600, may also be detected by the redundant router 100_{B2}, which is at the same node as the failed router, at step 605, as depicted in the flowchart in FIG. 6. In step 610, router 100_{B2} sends a request to OXC_B that it connects to directly, also at node B, to restore the connection to office A by setting up a new lightpath link to routers 100_A. In step 615, the signaling mechanism may forward the request from OXC_B to OXC_A to complete all necessary switching to establish the new lightpath. Then, in step 620, upon restoration of the lightpath link to office/node A, routing in the IP layer will may automatically discover the new link between 100_A and 100_{B2}, and router 100_{B1} will be replaced by router 100_{B2} for all IP traffic through office/node B, and restoration may be complete at step.

This section of CHIU merely discloses that a failure of router 100_A is detected by redundant router 100_{B2}, which requests that OXC_B establish a connection

to router 100_A. This section of CHIU does not disclose or suggest that the working port is connected to the router in response to a failure of the primary router, as recited by claim 11. In fact, CHIU is silent on how OXC_B connects to router 100_{B2}. Therefore, CHIU cannot disclose that a working port of OXC_B connects to router 100_{B2}.

If the Examiner maintains this rejection, Applicant requests that the Examiner specifically point out what section of CHIU can reasonably be construed as disclosing that the working port is connected to the router in response to a failure of the primary router.

The disclosure of PAN does not remedy the deficiencies in the disclosure of CHIU, as described above with respect to claim 11.

Applicant respectfully submits that claim 11 is patentable over CHIU and PAN, whether taken alone or in any reasonable combination. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claim 11 under 35 U.S.C. 103(a) based on CHIU and PAN.

**Rejection under 35 U.S.C. § 103(a) based on CHIU, PAN and
ERICKSON**

Claims 12-14 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over CHIU, PAN and ERICKSON. Applicant respectfully traverses this rejection

Claims 12-14 depend from claim 11. While not concurring in this rejection, Applicant respectfully submits that the disclosure of ERICKSON does not remedy the deficiencies in the disclosures of CHIU and PAN as discussed above with respect to claim 11. Therefore, Applicant submits that claims 12-14 are patentable over CHIU, PAN and ERICKSON, whether taken alone or in any reasonable combination, for at least the reasons as set forth above with respect to claim 11. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 12-14 under 35 U.S.C. § 103(a) based on CHIU, PAN and ERICKSON.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims. Applicants respectfully request that the present amendment be entered, because the present amendment places the application in immediate condition for allowance. Moreover, Applicants respectfully request entry of the present amendment, because the present

amendment places the application in better condition for appeal, should the Examiner continue to contest the patentability of the pending claims.

As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (e.g., whether a reference constitutes prior art, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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